

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LL B SHEET 1, LLC,
 Plaintiff,

v.

MICHAEL J. LOSKUTOFF,
 Defendant.

Case No. [16-cv-02349-BLF](#)

**ORDER GRANTING
 ADMINISTRATIVE MOTIONS TO
 SEAL DOCUMENTS**

[Re: ECF 36, 37]

Before the Court are two administrative motions to seal from Defendant/Third-Party Plaintiff Michael J. Loskutoff (“Loskutoff”) and Plaintiff/Counter-Defendant LL B Sheet 1, LLC (“LL B Sheet”). ECF 36, 37. The motions relate to exhibits filed in support of Loskutoff’s Third Party Complaint and the Original Complaint filed by LL B Sheet. For the reasons discussed below, the motions are GRANTED.

I. LEGAL STANDARD

“Historically, courts have recognized a ‘general right to inspect and copy public records and documents, including judicial records and documents.’” *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006) (quoting *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 597 & n. 7 (1978)). Accordingly, when considering a sealing request, “a ‘strong presumption in favor of access’ is the starting point.” *Id.* (quoting *Foltz v. State Farm Mut. Auto. Ins. Co.*, 331 F.3d 1122, 1135 (9th Cir. 2003)). Parties seeking to seal judicial records relating to motions that are “more than tangentially related to the underlying cause of action” bear the burden of overcoming the presumption with “compelling reasons” that outweigh the general history of access and the public policies favoring disclosure. *Ctr. for Auto Safety v. Chrysler Grp.*, 809 F.3d 1092, 1099 (9th Cir. 2016); *Kamakana*, 447 F.3d at 1178–79.

1 However, “while protecting the public’s interest in access to the courts, we must remain
2 mindful of the parties’ right to access those same courts upon terms which will not unduly harm
3 their competitive interest.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 727 F.3d 1214, 1228–29 (Fed.
4 Cir. 2013). Records attached to motions that are “not related, or only tangentially related, to the
5 merits of a case” therefore are not subject to the strong presumption of access. *Ctr. for Auto*
6 *Safety*, 809 F.3d at 1099; *see also Kamakana*, 447 F.3d at 1179 (“[T]he public has less of a need
7 for access to court records attached only to non-dispositive motions because those documents are
8 often unrelated, or only tangentially related, to the underlying cause of action.”). Parties moving
9 to seal the documents attached to such motions must meet the lower “good cause” standard of
10 Rule 26(c). *Kamakana*, 447 F.3d at 1179 (internal quotations and citations omitted). This
11 standard requires a “particularized showing,” *id.*, that “specific prejudice or harm will result” if the
12 information is disclosed. *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
13 1210–11 (9th Cir. 2002); *see Fed. R. Civ. P. 26(c)*. “Broad allegations of harm, unsubstantiated
14 by specific examples of articulated reasoning” will not suffice. *Beckman Indus., Inc. v. Int’l Ins.*
15 *Co.*, 966 F.2d 470, 476 (9th Cir. 1992). A protective order sealing the documents during
16 discovery may reflect the court’s previous determination that good cause exists to keep the
17 documents sealed, *see Kamakana*, 447 F.3d at 1179–80, but a blanket protective order that allows
18 the parties to designate confidential documents does not provide sufficient judicial scrutiny to
19 determine whether each particular document should remain sealed. *See Civ. L.R. 79-5(d)(1)(A)*
20 *(“Reference to a stipulation or protective order that allows a party to designate certain documents*
21 *as confidential is not sufficient to establish that a document, or portions thereof, are sealable.”)*.

22 In addition to making particularized showings of good cause, parties moving to seal
23 documents must comply with the procedures established by Civ. L.R. 79-5. Pursuant to Civ. L.R.
24 79-5(b), a sealing order is appropriate only upon a request that establishes the document is
25 “sealable,” or “privileged or protectable as a trade secret or otherwise entitled to protection under
26 the law.” “The request must be narrowly tailored to seek sealing only of sealable material, and
27 must conform with Civil L.R. 79-5(d).” Civ. L.R. 79-5(b). In part, Civ. L.R. 79-5(d) requires the
28 submitting party to attach a “proposed order that is narrowly tailored to seal only the sealable

material” which “lists in table format each document or portion thereof that is sought to be sealed,” Civ. L.R. 79-5(d)(1)(b), and an “unredacted version of the document” that indicates “by highlighting or other clear method, the portions of the document that have been omitted from the redacted version.” Civ. L.R. 79-5(d)(1)(d). “Within 4 days of the filing of the Administrative Motion to File Under Seal, the Designating Party must file a declaration as required by subsection 79-5(d)(1)(A) establishing that all of the designated material is sealable.” Civ. L.R. 79-5(e)(1).

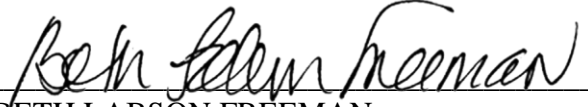
II. DISCUSSION

The sealing motions at issue are resolved under the compelling reasons standard because the complaint and its exhibits are more than tangentially related to the merits of the case. With this standard in mind, the Court rules on the instant motions as follows:

<u>ECF No.</u>	<u>Document to be Sealed</u>	<u>Result</u>	<u>Reasoning</u>
36-4	Exhibit B to the Third Party Complaint	GRANTED.	Contains confidential personal information.
37-3	Exhibit 1 to the Complaint	GRANTED.	Contains confidential personal information.

IT IS SO ORDERED.

Dated: September 27, 2016


 BETH LABSON FREEMAN
 United States District Judge